

And if the said _____ or their legal representatives shall pay to the officer in charge of the Custom-house at the port of _____, or to the Collector of _____, all dues, including customs-duties or other lawful charges, which shall be demandable on the said salt or on account of penalties incurred in respect thereto, within _____ from the date of this bond, together with interest on every such sum at the rate of six per cent per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house :

And if, within the term so fixed or such further period (if any) as may be granted by the Chief Customs-authority for the payment thereof, the full amount of all customs-duties and other lawful charges, penalties, and interest demandable as aforesaid shall have been first paid on the whole of the said salt ;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in force.

(Date)

(Signed)

THE BURMA EXCISE ACT.

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THE BURMA EXCISE ACT.

[BURMA ACT V, 1917.] (1st October, 1917.)

CHAPTER I.

PRELIMINARY AND DEFINITIONS.

1. * * * *

2. In this Act, unless there is something repugnant in the subject or Definitions context,—

(a) "alcoholic liquor" means all liquid containing more than 2 per cent. of alcohol by volume, also unfermented *tari* and any substance which the President of the Union may, by notification, declare to be alcoholic liquor for the purposes of this Act;

(b) "beer" includes ale, stout, porter and other alcoholic liquors prepared by fermentation and usually made from malt, and also

- such other alcoholic liquors as may be declared by the President of the Union to be beer for the purposes of this Act ;
- (c) "to bottle" means to transfer liquor from a cask or other vessel to a bottle, jar, flask, or similar receptacle whether any process of manufacture is employed or not, and includes to re-bottle ;
- (d) * * * *
- (e) "denatured" means rendered unfit for human consumption in such manner as may be prescribed by rule made in this behalf under section 65, sub-section (2), clause (l) ;
- (f) "excisable article" means any alcoholic liquor or intoxicating drug as defined by or under this Act ;
- (g) "Excise-officer" means any person or officer appointed or invested with powers under this Act ;
- (h) "excise-revenue" means revenue derived or derivable from any duty, fee, tax, composition, penalty, payment, or confiscation imposed or ordered under the provisions of this Act or of any other law for the time being in force relating to alcoholic liquor or intoxicating drugs ; but does not include a fine imposed by a Court of law ;
- (i) "export" means to take out of the Union of Burma ;
- (j) * * * *
- (k) "import" means to bring into the Union of Burma ;
- (l) "intoxicating drug" means—
- (i) the leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa*, L.), including all forms known as *bhang*, *siddhi* or *ganja* ;
 - (ii) *charas*, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport ;
 - (iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom ; and
 - (iv) any other intoxicating or narcotic substance [or any fermenting agent]¹ which the President of the Union may, by notification, declare to be an intoxicating drug, such substance [or agent]¹ not being opium, coca-leaf, or a manufactured drug, as defined in section 2 of the Dangerous Drugs Act ;
- (m) "manufacture" includes—
- (i) every process, whether natural or artificial, by which any excisable article is produced or prepared (including the tapping of *tari* producing trees and the drawing of *tari* from trees) ;
 - (ii) redistillation ; and

¹ Inserted by Act LXXIII, 1953.

- (iii) every process for the rectification, flavouring, blending or colouring of alcoholic liquor ;
- (n) " medical practitioner " means—
- (i) any person possessed of qualifications which render him eligible for registration under the Medical Act, 1858, and any Act of [Parliament of the United Kingdom of Great Britain and Ireland]¹ amending the same, or under any law for the registration of medical practitioners for the time being in force in any part of the Union of Burma, or
 - (ii) any dentist possessed of qualifications which render him eligible for registration as a dentist under the Dentists' Act, 1878, and any Act of Parliament of the United Kingdom of Great Britain and Ireland amending the same, or
 - (iii) any other person engaged in medical or dental practice, licensed as a medical practitioner for the purposes of this Act by the Excise Commissioner ;
- (o) " place " includes a building, shop, tent, enclosure, booth, vehicle-vessel and raft ;
- (p) expressions referring to " sale " include any transfer otherwise than by way of gift ;
- (q) " spirit " means any alcoholic liquor containing alcohol obtained by distillation ;
- (r) " tari " means the sap or juice whether fermented or unfermented of any kind of palm tree ;
- (s) " transport " means to move between places within the Union of Burma ;
- (t) " veterinary practitioner " means a person holding a veterinary diploma or certificate recognized by the President of the Union in this behalf.

3. The President of the Union may, by notification, declare what, for all or any of the purposes of this Act, shall be deemed to be " country alcoholic liquor " and " foreign alcoholic liquor " respectively.

The President to declare what shall be deemed to be " country alcoholic liquor " and " foreign alcoholic liquor " respectively.

4. All powers conferred by this Act on the President of the Union may be exercised, wholly or partially, with respect either to the whole of the Union of Burma or to any local area, as regards persons generally or any specified class of persons or any specified individual, and as regards excisable articles generally or any specified excisable article or different strengths and qualities of the same excisable article, and as regards manufacture generally or any specified method of manufacture, and as regards cultivation, possession and sale of any excisable article.

Powers conferred by the Act may be exercised wholly or partially.

¹ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

Power of President to exempt persons and excisable articles from the provisions of the Act.

5. (1) Subject to such conditions as he may prescribe, the President of the Union may, by notification, exempt any person or any excisable article from the provisions of this Act¹.

Saving of enactments.

(2) Save as provided by the Schedule, nothing contained in this Act shall affect the provisions of the Sea Customs Act, or the Cantonments Act, or the Burma Tariff Act.

CHAPTER II.

ESTABLISHMENT AND CONTROL.

President's powers of appointment and control.

6. The President of the Union may by notification—

- (a) appoint an officer, hereinafter referred to as the Excise Commissioner, who shall, subject to the orders of the President of the Union, have the control of the administration of the Excise department and of the collection of the excise-revenue;
- (b) appoint any person or officer other than the Collector to exercise all or any of the powers and to perform all or any of the duties of a Collector under this Act, either concurrently with, in subordination to or to the exclusion of the Collector, subject to such control as the President of the Union may direct;
- (c) appoint officers of the Excise department of such classes and with such designations, powers and duties under this Act as he may think fit;
- (d) order that all or any of the powers and duties assigned to any officer under clause (c) shall be exercised by any Government officer or any person;
- (e) delegate to the Financial Commissioner, to a Commissioner or to the Excise Commissioner all or any of his powers under this Act;
- (f) permit the delegation subject to such conditions as he may think fit by the Financial Commissioner, by a Commissioner, by the Excise Commissioner or by a Collector of any powers conferred on him or them by this Act or exercised in respect of excise-revenue under any Act for the time being in force;
- (g) declare in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act and by what authorities such orders may be revised, and prescribe the time for and manner of presenting and the procedure for dealing with appeals and revisions.

¹ Now the Tariff Act, No. LXXII of 1953.

CHAPTER III.

IMPORT, EXPORT AND TRANSPORT.

7. No excisable article shall be imported, exported or transported, except—

Restriction on import, export or transport.

- (a) after payment of any customs or excise duty to which it may be liable or execution of a bond for such payment; and
 (b) on compliance with such conditions as the President of the Union may impose.

8. The President of the Union may, by notification, prohibit the transport and the import or export of any excisable article.

Power to prohibit import, export or transport.

9. No excisable article exceeding such quantity as the President of the Union may prescribe by notification shall be imported, exported or transported, except under a pass issued under the provisions of section 10 :

Passes to import, export or transport.

Provided that in the case of duty-paid foreign alcoholic liquor such passes shall be dispensed with unless the President of the Union shall by notification otherwise direct.

10. Save in respect of such excisable articles as the Excise Commissioner may prescribe by notification, passes for the import, export or transport of excisable articles may be granted by the Collector.

Passes granted by Collector.

CHAPTER IV.

MANUFACTURE, POSSESSION AND SALE.

11. No person shall cultivate or collect the hemp plant (*Cannabis Sativa*), or any plant specified as an intoxicating drug by notification under section 2 (I) (iv), except under and in accordance with the conditions of a special licence granted by the President of the Union.

Hemp cultivation prohibited.

12. Except under the authority and subject to the conditions of a licence granted under this Act—

Unlicensed manufacture, etc., prohibited.

- (a) no excisable article shall be manufactured or collected ;
 (b) no distillery or brewery shall be constructed or worked ; and
 (c) no person shall use, keep or have in his possession any materials or apparatus whatsoever for the purpose of manufacturing any excisable article.

13. No person shall make, sell, possess or use—

- (i) any hypodermic syringe, or
 (ii) any other apparatus suitable for injecting any intoxicating drug,
 except under and in accordance with the conditions of a licence granted under this Act :

Unlicensed possession or use, etc., of hypodermic syringes prohibited.

Provided that this prohibition shall not apply to—

- (a) a medical practitioner,
- (b) a veterinary practitioner.
- (c) a person who possesses or uses any such syringe or apparatus on the prescription of a medical practitioner.

Establishment of distilleries, breweries and warehouses.

14. The Excise Commissioner may—

- (a) establish premises in which alcoholic liquor may be manufactured under a licence granted under section 12 ;
- (b) sanction the construction and working of a distillery or brewery ; and
- (c) establish or sanction the establishment of a warehouse wherein any excisable article may be deposited, bottled or kept without payment of duty.

Payment of duty on removal from distillery, brewery or place of storage.

15. Without the sanction of the President of the Union, no excisable article shall be removed from any premises, distillery, brewery, warehouse or other place of storage established or licensed under this Act unless the duty (if any) imposed under section 24 has been paid or a bond has been executed for the payment thereof.

Possession of excisable articles generally.

16. (1) The President of the Union may, by notification, prescribe a limit of quantity for possession of any excisable article.

(2) No person shall have in his possession any quantity of any excisable article in excess of the limit prescribed under sub-section (1), except under the authority and in accordance with the terms and conditions of—

- (a) a licence for the manufacture, cultivation, collection, sale or supply of such article, or
 - (b) a permit granted by the Collector in that behalf.
- (3) Sub-section (2) shall not apply to any foreign alcoholic liquor—
- (a) which is in the possession of any common carrier or warehouse man as such, or
 - (b) which is lawfully procured by and in the possession of any person for his *bona fide* private consumption and not for sale.

(4) Notwithstanding anything contained in the foregoing sub-sections, the President of the Union may, by notification, prohibit the possession of any excisable article or restrict such possession by such conditions as he may prescribe.

Prohibition of possession of excisable article unlawfully manufactured, imported, etc.

17. No person shall have in his possession any quantity of any excisable article, knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected, or knowing the prescribed duty not to have been paid thereon.

18. No alcoholic liquor shall be bottled for sale and no excisable article shall be sold except under the authority and subject to the conditions of a licence granted under this Act ;

Prohibition of sale without licence.

Provided that—

- (a) a person having the right to the *tari* drawn from any tree may sell the same without a licence to a person licensed to sell *tari* under this Act or permitted to possess *tari* in wholesale quantities by a permit granted under section 16 ;
- (b) nothing in this section shall apply to the sale of any foreign alcoholic liquor legally procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.

19. The President of the Union may grant within any specified area to any person the monopoly of manufacturing and of selling or of manufacturing only or of selling only any country alcoholic liquor.

Grant of exclusive privileges as regards country alcoholic liquor.

20. Within the limits of any military cantonment and within such distance from those limits as the President of the Union in any case may prescribe, no licence for the retail sale of alcoholic liquor shall be granted unless with the knowledge and consent of the Commanding Officer.

Manufacture and sale in cantonments.

21. Every person who manufactures or sells any excisable article under a licence granted under this Act shall be bound—

Licensees to keep weights, etc and to test articles as required.

- (a) to supply himself with such weights, measures and instruments as the Excise Commissioner may prescribe and to keep the same in good condition ; and
- (b) on the requisition of any Excise-officer duly empowered in that behalf, at any time to weigh, measure or test any excisable article in his possession in such manner as the Excise-officer may require.

22. (1) No person who is licensed to sell foreign alcoholic liquor or country spirit for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any person under the age of sixteen years in any part of such premises in which such alcoholic liquor or spirit is consumed by the public.

Prohibition of employment of persons under the age of sixteen years and of women.

(2) No person who is licensed to sell foreign alcoholic liquor for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman—

- (a) in any part of such premises, for the purpose of selling or serving or otherwise assisting in the sale of liquor ; or

- (b) in any part of such premises where alcoholic liquor is consumed, for any other purpose, except in accordance with such conditions as may be prescribed by the Collector with the previous approval of the Excise Commissioner.

Closing of shops for the sake of public peace.

23. The District Magistrate or, in Rangoon, the Commissioner of Police, by notice in writing to the licensee may require that any shop in which any excisable article is sold shall be closed at such times and for such periods as he may think necessary for the preservation of the public peace.

If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, a Magistrate of any class or Excise or Police officer above the rank of a peon or constable who is present may require such shop to be kept closed for such period as he may think necessary :

Provided that where any riot or unlawful assembly occurs, the licensee shall, in the absence of such Magistrate or officer, close his shop without any order.

CHAPTER V.

DUTIES AND FEES.

Duty on excisable articles.

24. (1) The President of the Union may impose a duty at such rate or rates as he thinks fit on any excisable article—

- (a) imported, exported or transported in accordance with the provisions of section 7 ; or
- (b) cultivated, collected or manufactured under any licence granted under section 11 or section 12 ; or
- (c) manufactured in any premises established or in any distillery or brewery licensed under section 14 :

Provided that—

- (i) duty shall not be imposed on any article which has been imported into the Union of Burma and was liable, on such importation, to duty under the Sea Customs Act or the Burma Tariff Act¹ ;
 - (ii) duty imposed on denatured spirit or beer manufactured in the Union of Burma shall, unless the President of the Union otherwise directs, be equal to the duty to which denatured spirit or beer, as the case may be, when imported into the Union of Burma by sea, is liable under the Burma Tariff Act¹.
- (2) Duty may be imposed under sub-section (1) at different rates according to the places to which any excisable article is to be removed or according to the strength and quality of such article.

Ways of imposing duty

25. A duty under section 24 may be imposed—

- (1) on the quantity of excisable articles imported, exported, transported, cultivated, collected or manufactured in or issued

¹ Now the Tariff Act, No. LXXII of 1953,

from any premises established or distillery or brewery or warehouse licensed under section 14 :

- (2) in respect of spirit or beer or country fermented alcoholic liquor other than *tari* produced in the Union of Burma—
- (a) on the quantity of materials used in the production thereof, or
(b) with reference to the degree of attenuation of the wash or wort.

26. Where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of issue of such article from the warehouse. Rate of duty on issue from bond.

27. Instead of or in addition to any duty leviable under this Chapter, the President of the Union may accept payment of a sum in consideration of the grant of any monopoly under section 19. Payment for monopoly.

CHAPTER VI.

LICENCES, PERMITS AND PASSES.

28. (1) The authority which granted any licence, permit or pass under this Act may cancel or suspend it in such circumstances as may be prescribed by rule in that behalf. Power to cancel or suspend licences.

(2) When a licence, permit or pass held by any person is cancelled under sub-section (1) any other licence, permit, or pass granted to such person under this Act or under any other law for the time being in force relating to excise-revenue or opium shall be liable to cancellation.

(3) When a licence, permit or pass is cancelled or suspended—

- (i) the holder shall not be entitled to any compensation for its cancellation or suspension or to the refund of any fee paid or deposit made in respect thereof ;
- (ii) the fee payable for the balance of the period for which such licence, permit or pass would have been current but for such cancellation or suspension may be recovered from the ex-licensee or his surety, if any, as excise-revenue ;
- (iii) a fresh licence for the unexpired period or for the period of suspension may be granted in accordance with the provisions of this Act, or a manager to carry on the business during such period may be appointed by the Collector : Provided that when the fee or duty realized on account of such fresh licence or the profit derived from such management together with the amount recovered under clause (ii) exceeds the amount so recoverable the Collector may refund to the person from whom the recovery was made so much of the excess as does not exceed the amount actually recovered.

Further power to withdraw licences.

29. (1) Whenever the authority which granted any licence considers that it should be withdrawn in circumstances which do not justify its cancellation or suspension under section 28, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days and may withdraw the licence either on the expiration of fifteen days' notice in writing of its intention to do so, or forthwith without notice.

(2) If any licence be withdrawn forthwith without notice under subsection (1), in addition to the sum remitted as aforesaid, there shall be paid to the licensee by way of compensation such further sum as the Excise Commissioner may direct.

(3) When a licence is withdrawn under this section any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, less the amount, if any, due to Government.

CHAPTER VII.

OFFENCES AND PENALTIES.

Penalties for illegal import, etc., of excisable articles.

30. Whoever, in contravention of this Act or of any rule, notification or order made or of any licence, permit or pass obtained thereunder,

- (a) imports, exports, transports, manufactures, collects or possesses any excisable article; or
- (b) save in the cases provided for in section 40, sells any excisable article; or
- (c) constructs or works any distillery or brewery; or
- (d) uses, keeps or has in his possession any materials or apparatus whatsoever for the purpose of manufacturing any excisable article; or
- (e) removes any excisable article from any premises, distillery, brewery or warehouse established or licensed under this Act; or
- (f) bottles any alcoholic liquor for the purposes of sale; or
- (g) cultivates the hemp plant, or any plant declared to be an intoxicating drug by a notification under section 2 (1) (iv)¹;

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for illicit distillation.

31. Whoever, in contravention of this Act or of any rule, notification or order made or of any licence, permit or pass obtained thereunder, manufactures any spirit shall be punishable with imprisonment which may extend to [one year and shall also be liable to fine.]¹

32. * * * *

Penalty for offences in relation to hypodermic syringes.

33. Whoever, in contravention of section 13, makes, sells, possesses or uses—

- (a) any hypodermic syringe, or
- (b) any other apparatus suitable for injecting any intoxicating drug.

¹ Substituted by Act XL, 1954.

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

34. Whoever—

- (a) alters or attempts to alter any denatured spirit, whether manufactured in the Union of Burma or not, with the intention that such spirit may be used in any way whatsoever for human consumption; or
- (b) has in his possession any spirit in respect of which he knows or has reason to believe that any such alteration or attempt has been made;

Penalty for altering or attempting to alter denatured spirit.

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

35. In prosecutions under section 34 where the accused person is proved to be in possession of any spirit which is, or contains, or has been derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in section 34 has been made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person—

Presumption as to offence under section 34 in certain cases.

- (a) has himself made such alteration or attempt, or
- (b) knows or has reason to believe that such alteration or attempt has been made.

36. In any prosecution under this Act it may be presumed, unless and until the contrary is proved, that any spirit which contains any quantity of any denaturant is, or has been derived from, denatured spirit.

Presumption as to any spirit which contains any denaturant.

37. Whoever without lawful authority has in his possession any quantity of any excisable article, knowing or having reason to believe that the same has been unlawfully imported, transported, manufactured, cultivated or collected, or that the prescribed duty has not been paid thereon, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Penalty for possession of excisable article.

38. (1) Whoever, in contravention of this Act or of any rule, notification or order thereunder, keeps or uses any place for the purpose of selling any alcoholic liquor or of selling or administering any intoxicating drug, or knowingly permits any place owned or occupied by him or under his control to be kept or used for such purposes, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

Penalty for keeping or knowingly permitting the keeping of place for selling alcoholic liquor or intoxicating drug.

(2) When any person is charged under sub-section (1) with permitting any place owned or occupied by him or under his control to be kept or used for the purpose of selling any alcoholic liquor or of selling or administering any intoxicating drug and it is proved—

- (a) that any person has been convicted under sub-section (1) of selling any alcoholic liquor or of selling or administering any intoxicating drug in such place;

- (b) that a written notice of such conviction has been served by the Collector on the person owning or occupying or being in control of such place ; and
- (c) that at any time within six months after the date of service of such notice such place has again been kept or used for the purpose of selling alcoholic liquor or of selling or administering an intoxicating drug ;

it shall be presumed until the contrary is proved that the person owning or occupying or being in control of such place knowingly permitted it to be kept or used for the purpose of selling alcoholic liquor or of selling or administering an intoxicating drug, as the case may be.

For offences not otherwise provided for.

39. Whoever does any act in contravention of any of the provisions of this Act, or of any rule, notification or order made thereunder, and not otherwise provided for therein, shall be punishable with fine which may extend to two hundred rupees.

Penalty for certain unlawful acts of licensed vendors.

40. (1) If a licensed vendor or any person in his employ or acting on his behalf—

- (a) sells or gives any excisable article to a person who is (i) intoxicated, or (ii) apparently under the age of eighteen years ; or
- (b) employs or permits to be employed on any part of the licensed premises any person whom he is prohibited from employing under this Act ; or
- (c) permits intoxication, disorderly conduct or gaming on the licensed premises ; or
- (d) permits persons whom he knows or has reason to believe to have been convicted of any non-bailable offence, or who are reputed prostitutes, to resort to or assemble on the licensed premises, whether for the purposes of crime or prostitution or for any other purpose ;

he shall, in addition to any other penalty to which he may be liable, be punishable, with fine which may extend to five hundred rupees.

(2) When any licensed vendor or any person in his employ or acting on his behalf is charged with permitting intoxication on the premises of such vendor, and it is proved that any person was intoxicated on such premises, it shall lie on the person charged to prove that the licensed vendor and the persons employed by him took all reasonable steps for preventing intoxication on such premises.

Penalty for misconduct by licensees, etc.

41. If the holder of a licence, permit or pass granted under this Act, or any person in the employ of such holder or acting on his behalf, intentionally—

- (a) fails without good and sufficient reason to produce such licence, permit or pass on the demand of any Excise-officer ; or
- (b) contravenes any rule made under section 65 ; or

(c) does any act in breach of any of the conditions of the licence, permit or pass not otherwise provided for in this Act ;

he shall be punishable in case (a) with fine which may extend to two hundred rupees, and in case (b) or case (c) with fine which may extend to five hundred rupees.

42. (1) If a chemist, druggist, apothecary or keeper of a dispensary allows any excisable article, which has not been *bona fide* medicated for medicinal purposes, to be consumed on his business premises by any person not employed in his business, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Penalty for consumption in chemist's shop, etc.

(2) If any person not employed as aforesaid consumes any such excisable article on such premises, he shall be punishable with fine which may extend to two hundred rupees.

43. (1) Whoever attempts to commit any offence punishable under this Act shall be liable to the punishment provided for the offence.

Attempts and abetments to commit offences.

¹(2) Whoever abets an offence punishable under this Act shall, whether such offence be or be not committed in consequence of such abetment, and notwithstanding anything contained in section 116 of the Penal Code, be liable to the punishment provided for the offence.

44. In prosecutions under section 30, section 31, section 33, section 37 or section 38 it may be presumed, until the contrary is proved, that the accused person has committed an offence under the section under which he is charged in respect of—

Presumption as to commission of offence in certain cases.

- (a) any excisable article, or any apparatus for administering any intoxicating drug, or for the manufacture of any excisable article ; or
- (b) any materials which have undergone any process towards the manufacture of an excisable article, or from which an excisable article has been manufactured

for the possession of which he is unable to account satisfactorily.

45. The holder of a licence, permit or pass under this Act shall be liable to punishment, as well as the actual offender, for any offence under section 30, section 31, section 33, section 34, section 37, section 40 or section 41 committed by any person in his employ or acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were taken by him to prevent the commission of such offence :

Liability of licence-holder for acts of employee or agent.

Provided that no person other than the actual offender shall be punished under this section with imprisonment except in default of payment of a fine.

46. If any person, after having been previously convicted of an offence punishable under section 30, section 31, section 33, section 34, section 37 or section 38 or under similar provision in any enactment repealed by this Act, is subsequently convicted of an offence punishable under any of these sections,

Enhanced punishment after previous conviction.

¹ Inserted by Act LXXII, 1951.

he shall be liable to twice the punishment which might be imposed on a first conviction under this Act :

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure from being so tried.

Things
liable to
confiscation,

47. Whenever an offence punishable under this Act has been committed,—

- (a) all excisable articles, materials, or apparatus which are found at the place of the offence ;
- (b) all receptacles, packages or coverings in which the said excisable articles, materials or apparatus are packed or stored ; and
- (c) all animals, vehicles, vessels, or other conveyances used in carrying the articles specified in clauses (a) and (b) ;

shall be liable to confiscation :

Provided that when it is proved that the articles specified in clauses (b) and (c) are not the property of the offender they shall not be liable to confiscation if the owner thereof establishes that he had no reason to believe that such offence was being or was likely to be committed.

Confiscation
how ordered.

48. (1) When at the trial of any person accused of any offence punishable under this Act, the Magistrate decides that any thing or animal is liable to confiscation under section 47, he may order confiscation or may give the owner of the thing or animal liable to be confiscated an option to pay such fine as he thinks fit in lieu thereof.

(2) When there is reason to believe that an offence punishable under this Act has been committed but the offender is not known or cannot be found, or when any thing or animal liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector who may order confiscation :

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing or animal intended to be confiscated or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claims :

Provided further that, if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale of the thing or animal in question would be for the benefit of its owner, the Collector may at any time direct it to be sold ; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Power to
compound
offences.

49. The Collector may accept from any person whose licence, permit or pass is liable to be cancelled or suspended under section 28, or who is reasonably suspected of having committed an offence under section 39, section 40, or section 41, a sum of money in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be, and in all cases whatsoever in which any property has been

seized as liable to confiscation under this Act may at any time before an order of confiscation has been passed by a Magistrate release the same on payment of such amount as he may fix in this behalf.

On the payment of such sum of money, or such amount or both, as the case may be, to the Collector, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

50. Any Excise-officer who shall be guilty of any violation of duty or wilful breach of or neglect of any law or rule or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission or without having given previous notice in writing for a period of two months, or who shall be guilty of cowardice, or who shall offer any unwarrantable violence to any person in his custody, or who shall cause unwarrantable damage to any property in the performance of his duties, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to three months' pay, or with both.

For Excise-officer refusing to do duty.

CHAPTER VIII.

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES.

51. (a) The owner or occupier, and the agent of any owner or occupier of any place in or on which,

- (b) every village-headman in whose village-tract, and
- (c) every ward-headman of a town in whose ward,

any excisable article is cultivated, collected, manufactured or stored in contravention of this Act or of any rule, notification or order made thereunder shall be bound to give notice of the same to a Magistrate or to a Revenue, Police or Excise officer as soon as the same has come to his knowledge.

Duty of owners, etc., to give information

52. Every Revenue, Police, Salt and Customs officer shall be bound to give immediate information to an Excise-officer of the commission of any offence punishable under this Act which may come to his knowledge, and to aid any Excise-officer in carrying out the provisions of this Act upon request made by such officer.

Duty of officers to report and assist Excise-officer.

53. An Excise-officer duly empowered in this behalf may—

- (a) enter and inspect at any time by day or by night any place in which any licensed manufacturer carries on the manufacture of or stores any excisable article ;
- (b) enter and inspect at any time during which sale is permitted, and at any other time during which the same may be open, any place at which any excisable article is kept for sale by any licensed person holding a licence under this Act ;

Power of entry and inspection.

- (c) examine accounts and registers and examine, test, measure or weigh any excisable articles, materials or apparatus found in the place ;
- (d) seize and remove any apparatus which he has found to be inaccurate.

Powers of arrest and seizure.

54. Subject to such restrictions as the President of the Union may prescribe, any Excise or Police officer, and any Revenue or Customs officer duly empowered in this behalf, may at any time by day or by night—

- (a) arrest without any warrant any person found committing an offence punishable under section 30, section 31, section 33, section 34, section 37 or section 38 ;
- (b) seize, search and detain any excisable article or other thing or animal which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to excise-revenue ;
- (c) detain and search any person upon whom he may have reason to suspect any article which is so liable to confiscation to be.

Power to issue a warrant for arrest or search.

55. If a Collector or Magistrate has reason to believe that an offence under section 30, section 31, section 33, section 34, section 37 or section 38 has been or is likely to be committed, he may issue a warrant—

- (a) for the search of any place in which he has reason to believe that any excisable articles, materials, or apparatus in respect of which such offence has been or is likely to be committed are kept or concealed ; and
- (b) for the arrest of any person, who, he has reason to believe, has been or is likely to be engaged in the commission of such offence.

Power to search without a warrant.

56. If an Excise-officer duly empowered in this behalf has reason to believe that an offence under section 30, section 31, section 33, section 34, section 37 or section 38 has been or is likely to be committed, and that a search-warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time by day or night,—

- (a) enter and search any place and may seize any thing found therein which he has reason to believe to be liable to confiscation under this Act, and
- (b) detain and search, and, if he thinks proper, arrest without a warrant any person found in such place whom he has reason to believe to be guilty of such offence.

Powers of Excise-officers in matters of investigation.

57. (1) An Excise-officer duly empowered in this behalf may as regards offences under section 30, section 31, section 33, section 34, section 37 and section 38 exercise powers similar to those conferred on an officer in charge of a police-station by the provisions of the Code of Criminal Procedure :

Provided that any such powers shall be subject to such restrictions and modifications (if any) as the President of the Union may by rule prescribe.

(2) For the purposes of section 156 of the said Code the area to which an Excise-officer is appointed shall be deemed to be a local area within the limits of a police-station, and such officer shall be deemed to be the officer in charge of the station.

(3) Any such officer, if specially empowered in that behalf, may, without reference to a Magistrate and for reasons to be recorded by him in writing, stop further proceedings against any person concerned or supposed to be concerned in any offence against this Act which he has investigated or which may have been reported to him.

58. If, on an investigation by an Excise-officer empowered under section 57, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer, unless he submits the case for the orders of the Collector under section 49 or proceeds under section 57, sub-section (3), shall submit a report (which shall for the purposes of section 190 of the Code of Criminal Procedure be deemed to be a police-report) to a Magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police-reports.

Report by
investigat-
ing officer.

59. When any Excise-officer below the rank of Collector makes any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search to his immediate official superior.

Report by
Excise-
officer.

60. Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure relating to arrests, detentions in custody, searches, summonses, warrants of arrests, search-warrants, the production of persons arrested and the disposal of things seized, shall be applicable as far as may be to all action taken in these respects under this Act:

Arrest,
searches,
etc., how to
be made.

Provided that the provisions of section 103 of the said Code shall not apply to searches of vessels made under this Act.

61. (1) When a person is arrested under this Act otherwise than on a warrant by a person or officer who is not empowered to grant bail, he shall be produced before or forwarded to—

Security
for appear-
ance in case
of arrest
without
warrant.

(a) the nearest Excise-officer empowered to grant bail, or

(b) the nearest officer in charge of a police-station, whichever is nearer.

(2) Whenever any person arrested under this Act otherwise than on a warrant is prepared to give bail, and is arrested by, or produced in accordance with sub-section (1) before, an officer empowered to grant bail, he shall be released upon bail or, at the discretion of the officer releasing him, on his own bond.

(3) When any such person is not prepared to give bail to the satisfaction of the officer concerned, he shall be sent with all convenient despatch, to a Magistrate for trial.

(4) The provisions of sections 499 to 502, 513, 514 and 515 of the Code of Criminal Procedure shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

Person arrested or ordered to give security to allow photograph or finger and thumb impressions to be taken.

¹ 61A. Every person who has been arrested under this Act for an offence punishable with imprisonment for a term which may extend to not less than six months and every person who has been ordered to give security for his good behaviour shall, if so required by an Excise-officer, allow his photograph or finger and thumb impressions to be taken at any time after the arrest.

Procedure in case of resistance or refusal to allow taking of same.

¹ 61B. (1) If any person who under section 61A is required to allow his photograph or finger and thumb impressions to be taken resists or refuses to allow the taking of the same, an Excise-officer may use all lawful means necessary to secure the taking thereof.

(2) Resistance to or refusal to allow the taking of photographs or finger and thumb impressions under sub-section (1) shall be deemed to be an offence under section 186 of the Penal Code.

Magistrate having jurisdiction to try offences.

62. No Magistrate of the third class who is not specially empowered by the District Magistrate in this behalf shall take cognizance of or try any offence under this Act.

Prosecution restricted.

63. (1) No Magistrate shall take cognizance of an offence punishable—

(a) under section 39, section 40 or section 41, except on the complaint or report of the Collector or of an Excise-officer authorized by him in this behalf; or

(b) under any other section of this Act, except on his own knowledge or suspicion or on the complaint or report of an Excise or Police officer.

(2) Except with the special sanction of the President of the Union, no Magistrate shall take cognizance of any offence punishable under this Act unless the prosecution is instituted within six months after the date on which the offence is alleged to have been committed.

Security for abstaining from committing offence on conviction.

¹ 64. (1) Whenever any person is convicted of an offence punishable under section 30, section 31, section 33, section 34, section 37, section 38 or section 43 (2), and the Court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of offences punishable under those sections, the Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means with or without sureties, for abstaining from the commission of such offence during such period, not exceeding three years, as it thinks fit to fix.

¹ Inserted by Act XL, 1954.

(2) The bond shall be in the form prescribed in the Schedule, and the provisions of the Code of Criminal Procedure shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate Court, or by the High Court when exercising its powers of revision.

64A. Whenever a District Magistrate, a Subdivisional Magistrate or, when he is especially empowered in this behalf by the President of the Union, a Magistrate of the first class, receives information that any person within the local limits of his jurisdiction earns his livelihood wholly or in part—

Power to demand security.

(a) by the unlawful manufacture, transport, importation, exportation, sale or purchase of any excisable article in contravention of the provisions of this Act or of any rules made thereunder ; or

(b) by abetting such unlawful manufacture, transport, importation, exportation, sale or purchase ;

he may deal with such person as nearly as may be as if the information received about him were of the description mentioned in section 110 of the Code of Criminal Procedure ; and for the purposes of any proceeding under this section the fact that a person earns his livelihood as aforesaid may be proved by evidence of general repute or otherwise.

CHAPTER IX.

MISCELLANEOUS.

65. (1) The President of the Union may make rules for the purpose of carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing provision, the President of the Union may make rules—

(a) regulating the import, export, transport or possession of any excisable article ;

(b) regulating the manufacture, supply, storage or sale of any excisable article, including the character, erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply, storage, or sale of such article, and the fittings, implements and apparatus to be maintained therein ;

(c) regulating the bottling of alcoholic liquor for sale ;

(d) regulating the deposit of any excisable article in a warehouse, and the removal of any excisable article from any such warehouse or from any distillery or brewery ;

(e) regulating the periods and localities for which, and the persons or classes of persons to whom, licences under this Act may be

- granted, and regulating the number of such licences which may be granted in any local area ;
- (f) determining the limits of wholesale and retail sale respectively ;
 - (g) prescribing the procedure to be followed and the matters to be ascertained before any licence for such sale is granted for any locality ;
 - (h) prescribing the amount of security, if any, to be deposited by holders of licences, permits or passes for the performance of the conditions of the same ;
 - (i) prescribing the scale of fees or the manner of fixing or determining the fees payable in respect of any privilege, licence, permit, or pass, or in respect of the storing of any excisable article ;
 - (j) regulating the time, place and manner of payment of any duty or fee ;
 - (k) prescribing the authority by, the restrictions under and the conditions on which any licence, permit or pass may be granted, cancelled, suspended or surrendered, and the form thereof, including—
 - (i) the prohibition of the admixture with any excisable article of any substance deemed to be noxious or objectionable ;
 - (ii) the regulation or prohibition of the reduction of alcoholic liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength ;
 - (iii) the fixing of the strength, price or quantity in excess of or below which any excisable article should not be sold or supplied and the prescription of a standard of quality for any excisable article ;
 - (iv) the prohibition of the employment by a licence-holder of any person or class of persons to assist him in his business in any capacity whatsoever ;
 - (v) the prohibition of the sale of any excisable articles to any person or class of persons ;
 - (vi) the prohibition of sale except for cash ;
 - (vii) the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises, and of the meeting or remaining of persons of bad character on such premises ;
 - (viii) the prescription of the days and hours during which any licensed premises may or may not be kept open, and provision for the closing of such premises on special occasions ;
 - (ix) the prescription of the nature of the premises in which any excisable article may be sold, and the notices to be exposed at such premises ;
 - (x) the prescription of the accounts to be maintained and the returns to be submitted by licence-holders ; and
 - (xi) the prohibition or regulation of the transfer of licences ;

- (l) with regard to the denaturing of spirit—
- (i) for declaring the substances with which and the processes by which spirit shall be denatured ;
 - (ii) for causing spirit to be denatured through the agency or under the supervision of such officers as may be prescribed ;
 - (iii) for ascertaining whether spirit has been denatured ;
- (m) providing for the destruction or other disposal of any excisable article deemed to be unfit for use ;
- (n) regulating the disposal of confiscated articles ;
- (o) regulating the grant of expenses to witnesses.

66. All rules made and notifications issued under this Act shall be published in the Gazette and shall thereupon have effect as if enacted in this Act.

Publication of rules and notifications.

67. (1) All monies due to Government under this Act may be recovered from the person primarily liable to pay the same or from his surety (if any) as if they were arrears of land-revenue.

Recovery of Government dues.

(2) When action has been taken under section 28 the Collector may recover, in any manner authorized by sub-section (1) of this section, any money due to the holder of the cancelled licence, permit or pass by any lessee or assignee.

(3) All such monies, together with any losses incurred by Government through the default of any licence-holder under this Act, shall be a first charge upon any distillery, brewery, warehouse, shop buildings, fittings, apparatus, or stocks of excisable articles or materials for manufacture of the same held in or upon any distillery, brewery, warehouse or shop premises, which, except with the written consent of the Collector, shall not be liable to be taken in execution of a decree or order of any Court until such monies or losses have been paid.

¹ 67A. Where any person, in compliance with any rule made under this Act, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Contract Act, section 74 ; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.

Recovery of penalty on breach of condition of bond.

68. No action shall lie in any civil Court against * * * * 2 the Government or against any Excise-officer for damages for any act in good faith done or ordered to be done in pursuance of this Act, or any law for the time being in force relating to excise-revenue.

Bar of actions.

69. All prosecutions of any Excise-officer, and all actions which may be lawfully brought against * * * * 2 the Government or against any

Time within which prosecutions may be instituted.

¹ Inserted by Act XI.VI, 1954.

² Deleted by the Union of Burma (Adaptation of Laws) Order, 1948.

Excise-officer, in respect of anything done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and not afterwards.

—————
SCHEDULE. ¹

*Bond to abstain from the Commission of Offences
under the Burma Excise Act.*

(See section 64.)

WHEREAS I _____ (name), inhabitant of _____ (place have been called upon to enter into a bond to abstain from the commission of an offence under section 30, section 31, section 33, section 34, section 37, section 38 or section 43 (2) of the Burma Excise Act, for the term of _____, I hereby bind myself not to commit any such offence during the said term and, in case of my making default therein, I hereby bind myself to forfeit to the President of the Union of Burma, the sum of Kyats _____.

Dated this _____ day of _____ 19

Signature.

(Where a bond with sureties is to be executed, add _____)

We do hereby declare ourselves sureties for the above named _____ that he will abstain from the commission of an offence under section 30, section 31, section 33, section 34, section 37, section 38, or section 43 (2) of the Burma Excise Act, during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to the President of the Union of Burma, the sum of Kyats _____.

Dated this _____ day of _____ 19

Signature.

¹ Inserted by Act XL, 1954.